

## The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AMAZON.COM, INC., a Delaware corporation; AMAZON.COM SERVICES LLC, a Delaware limited liability company; and NINTENDO OF AMERICA INC., a Washington corporation,

**Plaintiffs,**

V.

CHEN JING, and individual; ZHOU RONG, an individual; JINGJING SHAO, an individual,

## Defendants.

No. 2:23-cv-01641-MJP

**PLAINTIFFS' EX PARTE MOTION  
FOR DEFAULT JUDGMENT AND  
PERMANENT INJUNCTION AGAINST  
DEFENDANTS CHEN JING AND  
ZHOU RONG**

**NOTE ON MOTION CALENDAR:  
FEBRUARY 11, 2025**

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## I. INTRODUCTION

Nintendo of America Inc., established in 1980 and headquartered in Redmond, Washington, is a wholly owned subsidiary of Nintendo Co., Ltd., a Japanese company headquartered in Kyoto, Japan. Nintendo of America Inc. is responsible for the marketing and sale of Nintendo's products, and the enforcement of Nintendo's intellectual property rights in the United States. Nintendo Co., Ltd. develops, and Nintendo of America Inc. markets and distributes, electronic video game consoles, games, and accessories. (Together, Nintendo of America Inc. and Nintendo Co., Ltd. are referred to herein as "Nintendo.")

For decades, Nintendo has been a leading developer and producer of video games and video game consoles. Nintendo launched a toys-to-life product called “amiibo” to enhance the gaming experience by connecting figurines to various Nintendo video game consoles, including the Wii U, Nintendo 3DS, and Nintendo Switch. These toys use near field communication to interact with supported video game software. In 2015, Nintendo began selling interactive amiibo cards. Tapping an amiibo card while playing compatible Nintendo Switch, Nintendo 3DS, or Wii U systems uncovers various features for the gamer, including unlocking new modes, weapons, or character customizations, or boosting a character’s abilities.

Plaintiff Amazon.com Services LLC owns and operates the Amazon.com store (the “Amazon Store”), and affiliates of Plaintiff Amazon.com, Inc. (together with Amazon.com Services LLC, “Amazon”) own and operate equivalent counterpart international stores. Amazon’s stores offer products and services to customers in more than 100 countries around the globe. Some of the products are sold directly by Amazon entities, while others are sold by Amazon’s numerous third-party selling partners. The Amazon brand is one of the most well-recognized, valuable, and trusted brands in the world. To protect its customers and safeguard its reputation for trustworthiness, Amazon invests heavily in both time and resources to prevent counterfeit and infringing goods from being sold in its stores. In 2023 alone, Amazon invested over \$1.2 billion and employed more than 15,000 people to protect its stores from counterfeits, fraud, and other forms of abuses.

1 Amazon and Nintendo (together, “Plaintiffs”) are seeking relief against Defendants Chen  
 2 Jing (“Jing”) and Zhou Rong (“Rong,” and with Jing, “Defendants”) for their scheme to sell  
 3 counterfeit Nintendo-branded products in the Amazon Store. Through their respective Amazon  
 4 selling accounts (the “Selling Accounts”),<sup>1</sup> Defendants willfully sold at least \$2,343,386 of  
 5 products bearing counterfeit versions of Nintendo’s registered trademarks (the “Nintendo  
 6 Trademarks”).<sup>2</sup> Declaration of Robert Garrett (“Garrett Decl.”) ¶ 3. As a result of Defendants’  
 7 willful acts of infringement and deception, Nintendo, Amazon, and their customers have been  
 8 harmed and continue to be harmed. Plaintiffs brought this action to prevent further harm and to  
 9 hold Defendants accountable.

10 Defendants are in default. Dkt. 29. The prerequisites for default judgment have been met.  
 11 Fed. R. Civ. P. 55(b)(2); LCR 55(b). Nintendo seeks statutory damages under the Lanham Act,  
 12 and Plaintiffs seek entry of a permanent injunction to prevent further harm to Plaintiffs and their  
 13 customers.

## 14 II. DEFAULT JUDGMENT SHOULD BE GRANTED

### 15 A. Defendants Are in Default.

16 Plaintiffs initiated this action on October 27, 2023, by filing a Complaint for Damages  
 17 and Equitable Relief against individuals and entities doing business as certain Amazon selling  
 18 accounts. Dkt. 1. Pursuant to an order of this Court, Plaintiffs conducted expedited discovery that  
 19 identified Jing and Rong as responsible for the Selling Accounts used in selling counterfeit  
 20 Nintendo-branded products. Dkt. 13. Accordingly, Plaintiffs filed a First Amended Complaint  
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24 <sup>1</sup> The Selling Accounts are: (1) AmllboCards; (2) Blkei; (3) Chengdahuo; (4) Chiaofushi; (5) Fyhale Direct;  
 25 (6) Jiadan-US; (7) Marsberg; (8) Srhdfbeygfjs; and (9) Xingfang. Declaration of Robert Garrett ¶ 3.

26 <sup>2</sup> The “Nintendo Trademarks” refer to U.S. Trademark Registration Nos. (1) 1,689,015; (2) 2,358,736;  
 27 (3) 2,515,001; (4) 2,578,692; (5) 2,803,207; (6) 3,408,725; (7) 3,408,763; (8) 3,447,655; (9) 4,234,454;  
 (10) 4,791,747; (11) 4,863,365; (12) 4,905,782; (13) 4,946,348; (14) 4,988,289; (15) 5,024,203; (16) 5,192,374;  
 (17) 5,228,602; (18) 5,277,680; (19) 5,964,030; (20) 6,082,304; (21) 6,109,886; (22) 6,110,151; (23) 6,187,440;  
 (24) 6,213,745; (25) 6,291,670; (26) 2,345,332; (27) 6,829,861. Declaration of Jacqueline Knudson (“Knudson  
 Decl.”) ¶ 2.

1 for Damages and Equitable Relief (“FAC”) naming Jing and Rong as defendants.<sup>3</sup> See FAC  
 2 (Dkt. 14).

3 In accordance with the Court’s order granting Plaintiffs’ Motion for Alternative Service  
 4 (Dkt. 24), Plaintiffs successfully served Defendants with the FAC and Summons via registered  
 5 email on October 7, 2024. Dkt. 25. Defendants have not appeared personally or through counsel,  
 6 have not filed or served answers during the time provided in Rule 12 of the Federal Rules of  
 7 Civil Procedure, and have not otherwise indicated their intent to participate in this litigation. Dkt.  
 8 29. Accordingly, on November 15, 2024, the Clerk entered an order of default against  
 9 Defendants. *Id.* Plaintiffs now move for default judgment under Federal Rule of Civil Procedure  
 10 55(b) and Local Civil Rule 55(b).

#### **B. This Court Has Jurisdiction.**

12 In considering entry of default judgment, the Court must examine its jurisdiction over the  
 13 subject matter and parties. *See In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999).

##### **1. Subject Matter Jurisdiction.**

15 The Court has subject matter jurisdiction over Nintendo’s claims for trademark  
 16 counterfeiting and trademark infringement (Claim 1), and for false designation of origin (Claim  
 17 2), pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a). The Court also has  
 18 subject matter jurisdiction over Amazon’s claim for false designation of origin (Claim 3),  
 19 pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338. Additionally, the Court has  
 20 subject matter jurisdiction over Plaintiffs’ claim for violation of the Washington Consumer  
 21 Protection Act (“CPA”) (Claim 4), pursuant to 28 U.S.C. §§ 1332 and 1367.

##### **2. Personal Jurisdiction.**

23 The Court has personal jurisdiction over Defendants on two grounds. First, the Amazon  
 24 Business Solutions Agreement (“BSA”) that Defendants entered into with Amazon in order to  
 25 register the Selling Accounts contains a forum selection clause that vests this Court with

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27 <sup>3</sup> The FAC also named Jingjing Shao as a defendant. *See* Dkt. 14. Plaintiffs voluntarily dismissed Shao, without  
 prejudice, on September 26, 2024. Dkt. 19.

1 jurisdiction to hear this dispute. FAC ¶¶ 6, 16, 29-30, Ex. B; *see Glud & Marstrand A/S v. Viva*  
 2 *Magnetics Ltd (Hong Kong)*, 2012 WL 12878686, at \*2 (W.D. Wash. Aug. 7, 2012) (Pechman,  
 3 J.) (forum selection clause alone is sufficient to confer personal jurisdiction and venue) (citing  
 4 *Chan v. Soc'y Expeditions, Inc.*, 39 F.3d 1398, 1406-07 (9th Cir. 1994)).

5 Second, independent of the forum selection clause, the Court also has personal  
 6 jurisdiction over Defendants because they purposefully directed their unlawful activities toward  
 7 Washington and consummated transactions in Washington, including sales of their counterfeit  
 8 goods to customers in Washington. FAC ¶ 15. Washington's long-arm statute is coextensive with  
 9 federal due process. RCW 4.28.180. Therefore, to exercise personal jurisdiction over a  
 10 nonresident defendant, a court need only find that the defendant has "certain minimum contacts"  
 11 with the forum "such that the maintenance of the suit does not offend traditional notions of fair  
 12 play and substantial justice." *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945) (internal  
 13 quotation marks and citation omitted). This means that a "defendant's conduct and connection  
 14 with the forum State must be such that the defendant should reasonably anticipate being haled  
 15 into court there." *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990) (internal quotation marks  
 16 and citation omitted).

17 This Court has specific jurisdiction over Defendants because their "contacts with the  
 18 forum give rise to the cause of action before the court." *Rinky Dink Inc. v. Elec. Merch. Sys.*  
 19 *Inc.*, 2014 WL 5880170, at \*2 (W.D. Wash. Sept. 30, 2014) (Coughenour, J.) (quoting *Doe v.*  
 20 *Unocal Corp.*, 248 F.3d 915, 923 (9th Cir. 2001), *overruled on other grounds as discussed in*  
 21 *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1024 (9th Cir. 2017)). The Ninth Circuit  
 22 evaluates specific jurisdiction using a three-part test:

23           (1) The non-resident defendant must purposefully direct his  
 24           activities or consummate some transaction with the forum or  
 25           resident thereof; or perform some act by which he purposefully  
 26           avails himself of the privilege of conducting activities in the  
 27           forum, thereby invoking the benefits and protections of its laws;  
                  (2) the claim must be one which arises out of or relates to the  
                  defendant's forum-related activities; and

(3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

*Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (internal quotation marks and citation omitted). The purposeful availment prong requires a showing that ““defendant allegedly [...] (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.”” *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (alteration in original) (quoting *Schwarzenegger*, 374 F.3d at 803).

These jurisdictional requirements are satisfied. Defendants unlawfully sold counterfeit Nintendo-branded products that infringe the Nintendo Trademarks in violation of state and federal law, and in breach of Defendants' agreements with Amazon. *See* FAC ¶¶ 29-39. Defendants' acts were aimed at Washington because Defendants entered into an ongoing contractual relationship with a Washington company, Amazon, and then violated that contractual relationship by selling counterfeit products in the Amazon Store. *Id.* Pursuant to their contracts with Amazon, Defendants' fraudulent transactions flowed through Washington. Furthermore, through the Selling Accounts, Defendants sold counterfeit Nintendo-branded products to Washington residents. *See* Garrett Decl. ¶ 3; Dkt. 22 ¶ 2. These acts in Washington caused harm to Amazon and its customers, to Nintendo and its customers, and to the public. *See Yahoo! Inc.*, 433 F.3d at 1206-07. Plaintiffs' claims arise out of these activities, and there is nothing unreasonable about exercising jurisdiction here.

**C. Plaintiffs' FAC Establishes Defendants' Liability.**

On a motion for default judgment, the Court must accept the factual allegations in the operative complaint as true, with the exception that facts related to the amount of damages must be proven. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam); *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam) (same); *accord Bd. of Trs. of Auto. Machinists Pension Tr. v. Ross Island Sand & Gravel Co.*, 2020 WL 6132203, at

1 \*1 (W.D. Wash. Oct. 19, 2020) (Martinez, J.). The factual allegations in the FAC establish that  
 2 Defendants are liable on all claims.<sup>4</sup>

3       **1.       Nintendo<sup>5</sup> Has Proven Its Claim for Trademark Counterfeiting and**  
   **Infringement (Claim 1).**

5           To prevail on its claim for trademark infringement, Nintendo must show that Defendants  
 6 “(1) reproduc[ed], counterfeit[ed], [or] cop[ied] … [the Nintendo Trademarks], (2) without its  
 7 consent, (3) in commerce, (4) in connection with the sale, offering for sale, distribution or  
 8 advertising of any goods, (5) where such use is likely to cause confusion, or to cause a mistake or  
 9 to deceive.” *Amazon.com v. Kurth*, 2019 WL 3426064, at \*2 (W.D. Wash. July 30, 2019) (Jones,  
 10 J.) (citing 15 U.S.C. § 1114). The test of likelihood of confusion is “whether a reasonably  
 11 prudent consumer in the marketplace is likely to be confused as to the origin of the goods or  
 12 service bearing one of the marks.” *Id.* (internal quotation marks and citation omitted).  
 13 “Commerce” under the Lanham Act is broadly defined as “all commerce which may lawfully be  
 14 regulated by Congress,” (15 U.S.C. § 1127), which includes conduct having an effect on  
 15 interstate sales in the United States, as alleged here. *Steele v. Bulova Watch Co.*, 344 U.S. 280,  
 16 286-87 (1952); *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 612-13 n.6 (9th Cir. 2010)  
 17 (citing *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 426 (9th Cir. 1977)).

18           As alleged by Plaintiffs and admitted by default, Nintendo has proven this claim by  
 19 demonstrating the following: (1) it owns the Nintendo Trademarks (FAC ¶ 5, Ex. A; Declaration  
 20 of Jacqueline Knudson (“Knudson Decl.”) ¶ 2, Ex. A); (2) it examined samples of products that  
 21 Defendants shipped to Amazon, or images of the same (FAC ¶ 38, Schedule 1; Knudson Decl.  
 22 ¶¶ 3-4); and (3) it determined those products were counterfeit imitations of Nintendo-branded  
 23 products, illegally bearing the Nintendo Trademarks, based on deviations from authentic

24  
 25  
 26       <sup>4</sup> Amazon is not moving for judgment on its breach of contract claim. Amazon agrees to voluntarily dismiss that  
   claim without prejudice.  
 27       <sup>5</sup> “Nintendo” in the following sections refers to Plaintiff Nintendo of America Inc.

Nintendo products and their packaging, instructions, and printing (FAC ¶¶ 38, 48; Knudson Decl. ¶¶ 3-5).

These well-pled allegations, as supported by Plaintiffs' declarations, establish trademark infringement. *See, e.g., Amazon.com, Inc. v. White*, 2022 WL 1641423, at \*6-7 (W.D. Wash. May 24, 2022) (Chun, J.) (granting motion for default judgment on trademark infringement claim based on well-pled allegations in complaint); *Amazon.com, Inc. v. Sirowl Tech.*, 2022 WL 19000499, at \*2 (W.D. Wash. Oct. 3, 2022) (Lasnik, J.) (finding that “allegations in the complaint, taken as true, establish plaintiffs’ trademark infringement claim”); *Powerwand Inc. v. Hefai Neniang Trading Co.*, 2023 WL 4201748, at \*4 (W.D. Wash. June 27, 2023) (Chun, J.) (accepting plaintiff’s allegations as true, “a reasonably prudent consumer would likely confuse [d]efendants’ offerings with [plaintiff’s] products” and therefore plaintiff established its claim for trademark infringement); *Coach, Inc. v. Pegasus Theater Shops*, 2013 WL 5406220, at \*3 (W.D. Wash. Sept. 25, 2013) (Pechman, J.) (“[b]ecause counterfeit marks are, by design, ‘inherently confusing’ … if the plaintiff presents evidence demonstrating an allegedly infringing mark is counterfeit, then a strong likelihood of confusion is established and analysis of the *Sleekcraft* factors is unnecessary.”) (quoting *Gucci Am., Inc. v. Duty Free Apparel, Ltd.*, 286 F. Supp. 2d 284, 287 (S.D.N.Y. 2003)).

In summary, Defendants' unauthorized use of the Nintendo Trademarks in connection with the sale of counterfeit products in the Amazon Store was likely to confuse customers, causing them to believe, erroneously, that Defendants' goods were provided, sponsored, approved by, or somehow affiliated with, Nintendo.

**2. Plaintiffs Have Proven Their Claims for False Designation of Origin (Claims 2 and 3).<sup>6</sup>**

To prevail on their claims for false designation of origin, Nintendo and Amazon each must show that Defendants “(1) used in commerce (2) any word, false designation of origin,

<sup>6</sup> Nintendo is not moving for judgment on its false advertising claim. Nintendo agrees to voluntarily dismiss that claim without prejudice.

1 false or misleading description, or representation of fact, which (3) is likely to cause confusion or  
 2 mistake, or to deceive, as to sponsorship, affiliation, or the origin of the goods or services in  
 3 question.” *Luxul Tech. Inc. v. Nectarlux, LLC*, 78 F. Supp. 3d 1156, 1170 (N.D. Cal. 2015)  
 4 (citing *Freecycle Network, Inc. v. Oey*, 505 F.3d 898, 902-04 (9th Cir. 2007)); 15 U.S.C. § 1125.  
 5 These elements are routinely met in cases involving counterfeit marks, as “counterfeit marks are  
 6 inherently confusing.” *Philip Morris USA Inc. v. Shalabi*, 352 F. Supp. 2d 1067, 1073 (C.D. Cal.  
 7 2004) (internal quotation marks and citations omitted). With regard to Amazon, a plaintiff is not  
 8 required to own the trademarks that are infringed in order to state a claim under Section 43(a) of  
 9 the Lanham Act (codified at 15 U.S.C. § 1125(a)). *Obesity Rsch. Inst., LLC v. Fiber Rsch. Int'l,*  
 10 *LLC*, 310 F. Supp. 3d 1089, 1114 (S.D. Cal. 2018) (“The question of ownership is immaterial to  
 11 standing under § 43(a).”) (internal quotation marks and citations omitted). Section 43(a) is  
 12 “remedial in nature and should be interpreted and applied broadly so as to effectuate its remedial  
 13 purpose.” *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1193 (11th Cir. 2001).

14 Here, both Nintendo and Amazon have proven their false designation claims. As noted  
 15 above, Plaintiffs have shown that Defendants sold counterfeit imitations of Nintendo-branded  
 16 products bearing the Nintendo Trademarks. FAC ¶¶ 36-39; Knudson Decl. ¶¶ 3-4. This misuse  
 17 of the Nintendo Trademarks deceived customers into believing that they were buying authentic  
 18 Nintendo products when the goods were actually counterfeit. FAC ¶¶ 6-7, 50, 55. Defendants’  
 19 exploitation of the Nintendo Trademarks undermined Nintendo’s ability to safeguard its brand  
 20 goodwill and reputation for quality and excellence. See FAC ¶¶ 3, 28, 55; Knudson Decl. ¶ 5.

21 Likewise, Defendants deceived Amazon about the authenticity of the products they were  
 22 advertising, marketing, offering, and selling, in direct and willful violation of the BSA and  
 23 Amazon’s Anti-Counterfeiting Policies. The BSA requires a seller to represent and warrant that  
 24 it “will comply with all applicable Laws in [the] performance of its obligations and exercise of  
 25 its rights” under the BSA.” FAC ¶ 30, Ex. B. The BSA also incorporates Amazon’s Anti-  
 26 Counterfeiting Policies, which expressly prohibit the sale of counterfeit products and describe  
 27 Amazon’s commitment to preventing the sale and distribution of counterfeit goods in the

1 Amazon Store and the consequences for violating Amazon's policies. *Id.* ¶¶ 32-33, Ex. C.

2 Defendants agreed to those terms and then egregiously flouted them. *Id.* ¶¶ 6, 29-39.

3 Defendants' deceptive acts were material to Amazon's decision to allow Defendants to  
 4 sell their products in the Amazon Store because Amazon would not have allowed Defendants to  
 5 do so but for Defendants' deceptive acts. *Id.* ¶ 62. Defendants' false and deceptive sale of  
 6 counterfeit products in the Amazon Store jeopardized the trust that customers place in the  
 7 Amazon Store and the Amazon brand, which is one of the most recognized, valuable, and trusted  
 8 brands in the world. *Id.* ¶ 2, 64. The injury caused by Defendants to Amazon is irreparable  
 9 because it undermined, and threatens to continue to undermine, the significant efforts that  
 10 Amazon takes to protect the reputation of the Amazon Store as a place where customers can  
 11 conveniently select from a wide array of authentic goods made by the true manufacturer of those  
 12 products. *Id.* ¶¶ 19-27, 64.

13           **3. Plaintiffs Have Proven Their Claim for Violation of the Washington  
 14 Consumer Protection Act (Claim 4).**

15           To prevail on their claim for violation of the Washington CPA, Plaintiffs must show  
 16 “(1) an unfair or deceptive act or practice; (2) occurring in the conduct of trade or commerce;  
 17 (3) affecting the public interest; (4) injuring [their] business or property; and (5) a causal link  
 18 between the unfair or deceptive act and the injury suffered.” *BBC Grp. NV LLC v. Island Life  
 19 Rest. Grp. LLC*, 2020 WL 758070, at \*2 (W.D. Wash. Feb. 14, 2020) (Martinez, J.). Because a  
 20 CPA claim is “substantially congruous” to federal claims under the Lanham Act, *id.*, the above  
 21 analysis demonstrates that Plaintiffs have proven their CPA claims.

22           **D. The *Eitel* Factors Weigh in Favor of Default Judgment.**

23           To determine if default judgment is appropriate, courts apply the *Eitel* factors; namely,  
 24 “(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim,  
 25 (3) the sufficiency of the complaint, (4) the sum of money at stake in the action[,] (5) the  
 26 possibility of a dispute concerning material facts[,] (6) whether the default was due to excusable  
 27

1 neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring  
 2 decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

3 Here, as to the first factor, without entry of default judgment, Plaintiffs are prejudiced in  
 4 that they will have no remedy. *See Criminal Prods., Inc. v. Gunderman*, 2017 WL 664047, at \*2  
 5 (W.D. Wash. Feb. 17, 2017) (Jones, J.). Defendants have illegally sold counterfeit Nintendo-  
 6 branded products, deceiving customers and Amazon, infringing Nintendo’s valuable intellectual  
 7 property, tarnishing Nintendo’s and Amazon’s reputations, and causing Plaintiffs financial  
 8 losses. Without a default judgment, Plaintiffs lack a remedy and will “suffer great prejudice  
 9 through the loss of sales and diminution of goodwill,” while Defendants evade justice and retain  
 10 all profits from their illegal endeavors. *Philip Morris USA Inc. v. Castworld Prods., Inc.*, 219  
 11 F.R.D. 494, 499 (C.D. Cal. 2003).

12 As to the second and third factors, Plaintiffs have proven all of the claims asserted in  
 13 their well-pled FAC. *See Microsoft Corp. v. Ricketts*, 2007 WL 1520965, at \*2 (N.D. Cal.  
 14 May 24, 2007) (second and third *Eitel* factors typically considered together). *See supra*  
 15 Section II(C)(1)-(3).

16 As to the fourth factor, the damages that Nintendo seeks are authorized by statute and are  
 17 proportionate to the financial and reputational harm caused by Defendants’ counterfeiting  
 18 scheme. *See Lions Gate Films Inc. v. Saleh*, 2016 WL 6822748, at \*4 (C.D. Cal. Mar. 24, 2016)  
 19 (“The fourth factor balances the sum of money at stake ‘in relation to the seriousness of the  
 20 action.’ The amount at stake must not be disproportionate to the harm alleged.”) (internal  
 21 quotation marks and citation omitted). As alleged in the FAC, Defendants’ counterfeiting scheme  
 22 caused harm to Nintendo’s reputation and goodwill, as well as direct financial harm in the form  
 23 of lost sales. FAC ¶¶ 3, 28, 50; Knudson Decl. ¶ 5. The statutory damages sought here  
 24 (addressed *infra* Section II(E)(1)) are proportional to the harm caused by Defendants and serve  
 25 the Lanham Act’s compensatory and deterrent purposes.

26 As to the fifth factor, the possibility of a dispute concerning material facts is outweighed  
 27 by Defendants’ failure to appear, respond to the FAC, or otherwise avail themselves of their

1 “ample opportunity to contest the allegations.” *Criminal Prods.*, 2017 WL 664047, at \*3. “When  
 2 default has been entered, courts find that there is no longer the possibility of a dispute concerning  
 3 material facts because the court must take the plaintiff’s factual allegations as true.” *Curtis v.*  
 4 *Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1212 (W.D. Wash. 2014) (Robart, J.). Here, not  
 5 only are Plaintiffs’ allegations taken as true, but Plaintiffs have also identified irrefutable  
 6 evidence of Defendants’ infringement, including by reviewing counterfeit products supplied by  
 7 Defendants to Amazon for sale in the Amazon Store, or images of the same. FAC ¶¶ 36-40;  
 8 Knudson Decl. ¶¶ 2-4.

9       Under the sixth factor, it is “unlikely that the Defendants’ failure to respond is the  
 10 product of excusable neglect” because Defendants were served with the Summons and FAC.  
 11 *Criminal Prods.*, 2017 WL 664047, at \*2. Defendants have not answered or otherwise appeared  
 12 in this action despite this service. Dkt. 29.

13       For the seventh factor, although there is a strong policy for deciding cases on the merits,  
 14 Defendants’ refusal to respond to Plaintiffs’ claims makes such a decision “impractical, if not  
 15 impossible.” *Lions Gate*, 2016 WL 6822748, at \*5 (quoting *PepsiCo, Inc. v. Cal. Sec. Cans*, 238  
 16 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002)).

17       In sum, all of the *Eitel* factors support entry of default judgment against Defendants.

18       **E. The Court Should Award Plaintiffs the Relief Requested in the FAC.**

19       **1. The Court Should Exercise Its Discretion under the Lanham Act to  
 20 Award Statutory Damages to Nintendo.**

21       In counterfeit trademark cases, the Lanham Act allows an aggrieved trademark owner to  
 22 elect statutory damages in lieu of actual damages. *Philip Morris USA Inc. v. Lee*, 547 F. Supp. 2d  
 23 667, 679 (W.D. Tex. 2008). Where a court finds that the use of the counterfeit mark was willful,  
 24 it may award statutory damages of “not more than \$2,000,000 per counterfeit mark per type of  
 25 goods … sold, offered for sale, or distributed, as the court considers just.” 15 U.S.C.  
 26 § 1117(c)(2). “Willful trademark infringement occurs when the defendant’s actions are willfully  
 27 calculated to exploit the advantage of an established mark,” *DC Comics v. Towle*, 802 F.3d 1012,

1 1026 (9th Cir. 2015) (internal quotation marks and citation omitted), such as when the  
 2 defendant's conduct is "deliberate, false, misleading, or fraudulent," *Fifty-Six Hope Road Music,*  
 3 *Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1074 (9th Cir. 2015) (internal quotation marks and  
 4 citation omitted).

5 Nintendo is entitled to statutory damages for Defendants' trademark violations and is  
 6 electing those damages rather than actual damages. 15 U.S.C. §1117(c); *see also Microsoft Corp.*  
 7 *v. BH Tech, Inc.*, 2016 WL 8732074, at \*6 (C.D. Cal. Sept. 2, 2016). Statutory damages are  
 8 particularly appropriate in default judgment cases because the evidence proving actual damages  
 9 remains entirely within the defendants' control. *See Microsoft Corp. v. McGee*, 490 F. Supp. 2d  
 10 874, 882 (S.D. Ohio 2007); *Koninklijke Philips Elecs., N.V. v. KXD Tech., Inc.*, 347 F. App'x  
 11 275, 276 (9th Cir. 2009) (entering default judgment for statutory damages because the  
 12 defendant's failure to comply foreclosed proof of actual damages); *Kurth*, 2019 WL 3426064, at  
 13 \*4 ("[W]here proving actual damages in a default judgment is difficult due to the defendant's  
 14 absence, statutory damages are appropriate."). "Statutory damages further 'compensatory and  
 15 punitive purposes,' and help 'sanction and vindicate the statutory policy of discouraging  
 16 infringement.'" *Dream Games of Ariz. v. PC Onsite*, 561 F.3d 983, 992 (9th Cir. 2009) (quoting  
 17 *Los Angeles News Serv. v. Reuters Television Int'l, Ltd.*, 149 F.3d 987, 996 (9th Cir. 1998)).

18 Where, as here, defendants have failed to defend the claims, allegations of willfulness are  
 19 deemed admitted. *See Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir.  
 20 2008). The FAC's well-pled allegations of willfulness are therefore deemed admitted. *See* FAC  
 21 ¶¶ 7, 41, 48, 57, 62. Moreover, Defendants' deliberate and willful counterfeit trafficking scheme  
 22 is demonstrated by the volume of counterfeit products they sold in the Amazon Store.<sup>7</sup> Indeed,  
 23 Defendants sold at least \$2,343,386 of counterfeit Nintendo-branded products through their  
 24 respective Selling Accounts. Garrett Decl. ¶ 3; *see Philip Morris USA Inc. v. Marlboro Express*,

25 <sup>7</sup> Sales from the Blkei Selling Account controlled by Defendant Jing were \$235,321. *See* Garrett Decl. ¶ 3. Sales  
 26 from the Selling Accounts controlled by Rong were: (1) AmbllboCards: \$990,917; (2) Chiaofushi: \$180,853;  
 27 (3) Fyhale Direct: \$78,395; (4) Jiadan-US: \$237,348; (5) Marsberg: \$116,679; (6) Srhdfbeygfjs: \$346,029;  
 (7) Xingfang: \$141,960. *Id.* Sales from the Chengdahuo Selling Account jointly controlled by Defendants Jing and  
 Rong were \$15,884. *Id.*

1 2005 WL 2076921, at \*6 (E.D.N.Y. Aug. 26, 2005) (finding defendant's conduct willful for  
 2 purposes of awarding enhanced statutory damages). The Court must award at least \$1,000 per  
 3 infringed mark (15 U.S.C. §1117(c)(1)), but it has discretion to award up to \$2,000,000 in  
 4 statutory damages for each mark that Defendants willfully infringed. Nintendo has alleged and  
 5 proven Defendants' willful and unlawful use of the 27 Nintendo Trademarks. FAC ¶ 5, 38,  
 6 Ex. A; Knudson Decl. ¶¶ 2-4, Ex. A. Therefore, statutory damages in this case would be between  
 7 \$27,000 and \$54,000,000.

8 To calculate statutory damages for willful infringement, courts consider the need to:

9 (1) "compensate" the plaintiffs for the damage the defendant's actions caused; (2) "deter" the  
 10 defendants from violating the trademark[s]; and (3) "punish" the defendants for willfully  
 11 violating the trademark[s]. *See Philip Morris USA Inc. v. Liu*, 489 F. Supp. 2d 1119, 1124  
 12 (C.D. Cal. 2007). "The flagrant nature of defendants' activities underscores the need for a  
 13 damages award that will deter them from engaging in such conduct in the future." *Nautilus, Inc.*  
 14 v. *Chunchai Yu*, 2011 WL 13213575, at \*16 (C.D. Cal. Dec. 19, 2011) (awarding *maximum*  
 15 \$8 million in statutory damages against three defendants and \$4 million in statutory damages  
 16 against remaining two defendants for infringing four trademarks); *see also Wimo Labs, LLC v.*  
 17 *eBay, Inc.*, 2017 WL 10439835, at \*6 (C.D. Cal. Aug. 3, 2017) (awarding *maximum* \$4 million  
 18 in statutory damages where defendants infringed two trademarks); *Rolex Watch U.S.A., Inc. v.*  
 19 *Watch Empire LLC*, 2015 WL 9690322, at \*4 (C.D. Cal. Sept. 29, 2015) (awarding \$5 million as  
 20 half of maximum statutory damages where defendant infringed five trademarks); *Coach Servs.,*  
 21 *Inc. v. YNM, Inc.*, 2011 WL 1752091, at \*5-6 (C.D. Cal. May 6, 2011) (awarding \$1 million as  
 22 half of maximum statutory damages where defendants infringed one trademark); *Castworld*  
 23 *Prods., Inc.*, 219 F.R.D. at 502 (awarding the then-maximum \$2 million in statutory damages  
 24 where defendants infringed two trademarks).

25 Here, Defendants engaged in a scheme to import and sell counterfeit Nintendo-branded  
 26 products in the Amazon Store. Defendants deceived customers, infringed Nintendo's valuable  
 27 intellectual property, deprived Nintendo of legitimate sales, and tarnished Nintendo's reputation

1 by selling counterfeit products under the Nintendo brand. *See generally* FAC. Selling these  
 2 counterfeit products was particularly harmful to Nintendo because, as compared with Nintendo's  
 3 genuine products, the counterfeits were manufactured with subpar materials and shipped in  
 4 inferior packaging. Knudson Decl. ¶ 5. Misleading customers to believe that these inferior  
 5 products were manufactured by Nintendo is a direct affront to the level of quality and  
 6 craftsmanship associated with the Nintendo brand. *Id.*; *see* FAC ¶¶ 3, 55.

7 In addition to the incalculable loss of reputation and goodwill that Defendants caused to  
 8 Nintendo, Defendants diverted and impacted legitimate sales that Nintendo otherwise would  
 9 have made. Garrett Decl. ¶ 3; Knudson Decl. ¶ 5.

10 The identities of the Defendants responsible for the Selling Accounts are as follows:

11                   **a. Chen Jing, d/b/a Blkei Selling Account.**

12 Chen Jing is the accountholder of the financial account, administered by PingPong  
 13 Global Solutions Inc. ("PingPong") that was linked to the Blkei Selling Account. Dkt. 22 ¶ 2.

14 Through this Selling Account that they controlled, Defendant Jing sold a total of  
 15 \$235,321 in counterfeit Nintendo-branded products. Garrett Decl. ¶ 3. Nintendo therefore seeks  
 16 an award of three times the aggregate sales of counterfeit products in connection with this  
 17 Selling Account—\$705,963—in statutory damages against Defendant Jing. This request is  
 18 conservative, reasonable, and in line with other awards in this District where that amount is  
 19 below the Lanham Act's damages cap. *See Sirowl Tech.*, 2022 WL 19000499, at \*4-5 (finding  
 20 award of three times the amount of counterfeit sales—\$1,220,049—a “conservative and  
 21 reasonable” amount sufficient to compensate plaintiffs for damages caused by defendants, to  
 22 deter future violations, and to punish willful trademark violations); *White*, 2022 WL 1641423, at  
 23 \*6-7 (awarding plaintiff three times the aggregate sales of counterfeit products in the Amazon  
 24 Store); *Amazon.com Inc. v. Zhi*, 2024 WL 943465, at \*5-7 (W.D. Wash. Mar. 4, 2024)  
 25 (Cartwright, J.) (awarding plaintiff three times the aggregate sales of counterfeit products in the  
 26 Amazon Store).

b. Zhou Rong, d/b/a (1) AmllboCards; (2) Chiaofushi; (3) Fyhale Direct; (4) Jiadan-US; (5) Marsberg; (6) Srhdfbeygfjs; and (7) Xingfang Selling Accounts.

Zhou Rong is the accountholder of the financial accounts, administered by PingPong, that were linked to the (1) AmllboCards; (2) Chiaofushi; (3) Fyhale Direct; (4) Jiadan-US; (5) Marsberg; (6) Srhdfbeygfjs; and (7) Xingfang Selling Accounts. Dkt. 22 ¶ 2.

6 Through these Selling Accounts that they controlled, Defendant Rong sold a total of  
7 \$2,092,181 in counterfeit Nintendo-branded products. Garrett Decl. ¶ 3. Nintendo therefore seeks  
8 an award of three times the aggregate sales of counterfeit products in connection with these  
9 Selling Accounts—**\$6,276,543**—in statutory damages against Defendant Rong. This request is  
10 conservative, reasonable, and in line with other awards in this District.

c. Chen Jing and Zhou Rong, d/b/a Chengdahuo Selling Account.

Defendants Jing and Rong are each accountholders of financial accounts, administered by PingPong, that were linked to the Chengdahuo Selling Account. Dkt. 22 ¶ 2.

14 Through this Selling Account under their joint control, Defendants Jing and Rong sold a  
15 total of \$15,884 in counterfeit Nintendo-branded products. Garrett Decl. ¶ 3. Nintendo therefore  
16 seeks an award of three times the aggregate sales of counterfeit products in connection with this  
17 Selling Accounts—\$47,652—in statutory damages against Defendants Jing and Rong, jointly  
18 and severally. This request is conservative, reasonable, and in line with other awards in the  
19 District. Defendants Jing and Rong should be jointly and severally liable for this \$18,465 award.  
20 *Coach, Inc. v. Citi Trends, Inc.*, 2019 WL 1940622, at \*5 (C.D. Cal. Apr. 5, 2019) (“When there  
21 are multiple parties liable for counterfeiting the same trademarked goods, statutory damages  
22 under section 1117(c) are assessed on a joint and several basis.”).

## **2. Total Statutory Damages Sought by Nintendo Against All Defendants.**

Based on the scope of Defendants' abuse of the Nintendo Trademarks and in order to compensate Nintendo for the significant harm caused by Defendants' infringing conduct, Nintendo seeks a total award of **\$7,030,158** in statutory damages against Defendants. This amount is conservative and on the low end of the range of damages available for Defendants'

1 wrongdoing, but it is significant enough to provide deterrence against future counterfeiting  
 2 conduct. Defendants' refusal to participate in this litigation prevents Nintendo from uncovering  
 3 the entire scope of their scheme, including the full extent of their sales or profits outside of the  
 4 Amazon Store. Statutory damages are the only mechanism to compensate Nintendo for its  
 5 financial losses and the unquantifiable reputational harm it has suffered.

6 The statutory damages that Nintendo seeks also serve to punish Defendants and deter  
 7 them from engaging in further illegal activities. Absent a substantial damages award, Defendants  
 8 will not have any incentive to stop abusing Nintendo's brand. While injunctive relief is both  
 9 appropriate and necessary (as described below), it alone is not adequate to deter Defendants from  
 10 continuing to perpetrate their illegal scheme. A significant monetary judgment against  
 11 Defendants will help to deter their conduct by making it more difficult for them to generate  
 12 profits by infringing the intellectual property rights of others.

### 13           **3. Plaintiffs Are Entitled to a Permanent Injunction.**

14 Plaintiffs also seek a permanent injunction enjoining Defendants from their infringing  
 15 uses of the Nintendo Trademarks and from selling counterfeits in Amazon's stores. FAC § VI.  
 16 Specifically, Plaintiffs seek an order permanently enjoining Defendants, their officers, agents,  
 17 servants, employees, and attorneys, and all others in active concert or participation with them,  
 18 who receive actual notice of this order, from:

- 19           a. selling counterfeit or infringing products in Amazon's stores;
- 20           b. selling counterfeit or infringing products to Amazon or any Amazon affiliate;
- 21           c. importing, manufacturing, producing, distributing, circulating, offering to sell,  
                selling, promoting, or displaying any product using any simulation,  
                reproduction, counterfeit, copy, or colorable imitation of Nintendo's brand or  
                trademarks, or which otherwise infringes Nintendo's intellectual property, in  
                any store or in any medium; and

1                   d. assisting, aiding, or abetting any other person or business entity in engaging in  
 2                   or performing any of the activities referred to in subparagraphs (a) through (c)  
 3                   above.

4                   The Lanham Act authorizes “the ‘power to grant injunctions according to principles of  
 5                   equity and upon such terms as the court may deem reasonable, to prevent the violation of any  
 6                   right’ of the trademark owner.” *Reno Air Racing Ass’n., Inc. v. McCord*, 452 F.3d 1126, 1137  
 7                   (9th Cir. 2006) (quoting 15 U.S.C. § 1116(a)). The Washington CPA similarly authorizes  
 8                   injunctions to prevent violations of the statute. RCW 19.86.090 (allowing injunction against  
 9                   violations of the CPA). Indeed, it has long been recognized in the Ninth Circuit that “[a]n  
 10                  injunction is the standard remedy in unfair competition cases,” and “[i]njunctions for trademark  
 11                  infringement are well-recognized by this circuit.” *Nat'l Football League Props., Inc. v. Wichita*  
 12                  *Falls Sportswear, Inc.*, 532 F. Supp. 651, 664 (W.D. Wash. 1982) (citing *Levi Strauss & Co. v.*  
 13                  *Blue Bell, Inc.*, 632 F.2d 817 (9th Cir. 1980) and *HMH Publ’g Co., Inc. v. Brincat*, 504 F.2d 713  
 14                  (9th Cir. 1974)).

15                  With the passage of the Trademark Modernization Act of 2020, there is a rebuttable  
 16                  presumption of harm upon a showing of success on the merits. *See* 15 U.S.C. § 1116(a) (as  
 17                  amended December 27, 2020) (“A plaintiff seeking any such injunction shall be entitled to a  
 18                  rebuttable presumption of irreparable harm upon a finding of a violation identified in this  
 19                  subsection in the case of a motion for a permanent injunction.”). Further, “[a] permanent  
 20                  injunction based upon a trademark infringement action is appropriate where it is not ‘absolutely  
 21                  clear’ that a defendant’s infringing activities have ceased and will not begin again.” *Coach*  
 22                  *Servs.*, 2011 WL 1752091, at \*4 (citation omitted). Courts have emphasized that a defendant’s  
 23                  failure to answer a complaint or appear in litigation suggests it will continue infringing activities  
 24                  absent an injunction. *See BH Tech*, 2016 WL 8732074, at \*7; *Lions Gate*, 2016 WL 6822748, at  
 25                  \*6; *Adobe Sys. Inc. v. Cain*, 2008 WL 5000194, at \*3 (N.D. Cal. Nov. 21, 2008) (“[defendant’s]  
 26                  refusal to answer or appear in this litigation has given the court no assurance that [defendant’s]

1 infringing activity will cease and makes it difficult for [plaintiff] to prevent further  
 2 infringement.”).

3 In trademark cases, courts apply the traditional four-factor test for granting a permanent  
 4 injunction. *See Reno Air Racing Ass’n.*, 452 F.3d at 1137 (citing *eBay Inc. v. MercExchange,*  
 5 *LLC*, 547 U.S. 388, 392 (2006)). The four factors address whether: (1) the plaintiff has suffered  
 6 irreparable injury; (2) the plaintiff can be adequately compensated by a remedy at law, such as  
 7 monetary damages; (3) the balance of hardships between the plaintiff and defendant favors the  
 8 plaintiff; and (4) the permanent injunction will serve the public. *eBay*, 547 U.S. at 391.

9 Notably, a court in this District recently issued a permanent injunction on terms and  
 10 under circumstances nearly identical to those here. *Zhi*, 2024 WL 943465, at \*5-7. In *Zhi*,  
 11 Amazon.com, Inc. and J.L. Childress Co., Inc. (“J.L. Childress”), brought claims against a seller  
 12 under the Lanham Act, seeking damages and to enjoin sales of counterfeit J.L. Childress-branded  
 13 goods in the Amazon Store. *Id.* at \*1-2. Following entry of default, Amazon and J.L. Childress  
 14 filed a motion for default judgment. *Id.* at \*3. In granting that motion, the court found that each  
 15 of the four *eBay* factors noted above weighed in favor of the plaintiffs’ requested permanent  
 16 injunction. *Id.* at \*5-6. Accordingly, in addition to awarding J.L. Childress’s requested monetary  
 17 damages, the court issued an injunction permanently barring the defendants, and those acting in  
 18 concert with them, from (1) manufacturing, importing, distributing, or selling any product that  
 19 infringed on J.L. Childress’s trademarks, (2) selling counterfeit goods of any kind to Amazon or  
 20 its affiliates, and (3) assisting, aiding, or abetting any other party engaging in these prohibited  
 21 activities. *Id.* at \*5-7; *see also White*, 2022 WL 1641423, at \*5-7 (ordering permanent injunction  
 22 against defendants and those acting in concert with them); *Sirowl Tech.*, 2022 WL 19000499, at  
 23 \*5-7 (ordering statutory damages and permanent injunction on terms nearly identical to *White*  
 24 and based on similar counterfeiting conduct).

25 As in *Zhi*, *White*, and *Sirowl Technology*, here all four *eBay* factors favor granting  
 26 Plaintiffs’ requested relief, and therefore a permanent injunction should issue. Consistent with  
 27 Federal Rule of Civil Procedure 65(d)(2), Plaintiffs further request that the permanent injunction

1 cover the named Defendants and “their officers, agents, servants, employees, and attorneys, and  
 2 all others in active concert or participation with them who receive actual notice of the order.” *See*  
 3 Proposed Order. Rule 65 provides that injunctive relief is binding “upon the parties to the action,  
 4 their officers, agents, servants, employees, and attorneys, and upon those persons in active  
 5 concert or participation with them who receive actual notice of the order[.]” *Regal Knitwear Co.*  
 6 v. *N.L.R.B.*, 324 U.S. 9, 13-14, 16 (1945) (citing Fed. R. Civ. P. 65(d)(2)). Courts therefore  
 7 properly include language in orders indicating that injunctive relief applies to individuals acting  
 8 in concert with the named defendant. *See, e.g., Monster Energy Co. v. Vital Pharms., Inc.*, 2023  
 9 WL 2918724, at \*15-16 (C.D. Cal. Apr. 12, 2023). Otherwise, “[e]xcluding the phrase ‘acting in  
 10 concert’ from the injunction could nullify the decree by allowing Defendants to engage in  
 11 [prohibited acts] through aiders and abettors.” *Id.*

12 For example, in accordance with Rule 65, a court in this District granted a permanent  
 13 injunction in a trademark infringement case “prohibiting each defendant and their *officers,*  
 14 *agents, servants, employees and attorneys, and those persons acting in concert or participation*  
 15 *with them who receive actual notice of the permanent injunction by personal service or*  
 16 *otherwise*” from using the infringing mark. *Safeworks, LLC v. Teupen Am., LLC*, 717 F. Supp. 2d  
 17 1181, 1193 (W.D. Wash. 2010) (Zilly, J.) (emphasis added); *see also Zhi*, 2024 WL 943465, at  
 18 \*5-7.

19 Here, also, the permanent injunction should cover Defendants as well as their “officers,  
 20 agents, servants, employees and attorneys, and those persons acting in active concert or  
 21 participation with them who receive actual notice of the [permanent injunction].” *Zhi*, 2024 WL  
 22 943465, at \*7.

23                   **a. Plaintiffs Have Suffered Irreparable Injury.**

24 Defendants’ infringements have irreparably harmed Plaintiffs. Defendants’ actions have  
 25 damaged and will continue to damage Nintendo’s business, reputation, and goodwill, and may  
 26 discourage current and potential customers from purchasing Nintendo-branded products.  
 27 Similarly, by selling counterfeit products in the Amazon Store, Defendants have harmed

1 Amazon's business, reputation, and goodwill, and may discourage customers who unknowingly  
 2 purchased counterfeit products from continuing to shop in the Amazon Store. Such irreparable  
 3 damage will continue unless Defendants' acts are enjoined. Defendants' conduct of selling  
 4 counterfeit products while refusing to appear or respond in any way to Plaintiffs' claims is  
 5 indicative of their refusal to acknowledge or defend their wrongdoing and, by extension, their  
 6 likelihood to continue that conduct, whether under their own names or aliases. Although Amazon  
 7 has blocked the Selling Accounts, Defendants (and those acting in concert with them) may seek  
 8 other means of selling items to Amazon, its affiliates, or in the Amazon Store. Unless Defendants  
 9 are enjoined, their conduct threatens ongoing harm to Plaintiffs.

10                   **b. The Injury Cannot Be Compensated Adequately by Remedies  
 11 at Law.**

12                 Defendants' willful infringements have harmed and continue to harm Plaintiffs' business,  
 13 reputation, and goodwill such that Plaintiffs cannot be made whole by a monetary award. *See* 15  
 14 U.S.C. § 1116(a) (as amended December 27, 2020) (presumption of irreparable injury); *T-Mobile*  
 15 *USA, Inc. v. Terry*, 862 F. Supp. 2d 1121, 1133 (W.D. Wash. 2012) (injury presumed irreparable  
 16 upon finding of infringement) (citing *eBay*, 547 U.S. at 390; *Reno Air Racing Ass'n.*, 452 F.3d at  
 17 1137 n.11); *see also eBay, Inc. v. Bidder's Edge, Inc.*, 100 F. Supp. 2d 1058, 1066 (N.D. Cal.  
 18 2000) ("Harm resulting from lost profits and lost customer goodwill is irreparable because it is  
 19 neither easily calculable, nor easily compensable and therefore is an appropriate basis for  
 20 injunctive relief."). Without injunctive relief, Plaintiffs will be forced to repeatedly file suit any  
 21 time Defendants are found to be infringing the Nintendo Trademarks or otherwise deceiving  
 22 customers and Amazon. *See Cont'l Airlines, Inc. v. Intra Brokers, Inc.*, 24 F.3d 1099, 1104-05  
 23 (9th Cir. 1994) ("[T]he multiplicity of suits necessarily to be engendered if redress was sought at  
 24 law, all establish the inadequacy of a legal remedy and the necessity for the intervention of  
 25 equity.") (internal quotation marks and citation omitted). After resolution of this case, permanent  
 26 injunctive relief is the only adequate remedy to avoid the continued threat of Defendants'  
 27 infringement and deceptive conduct.

**c. The Balance of Hardships Favors Plaintiffs.**

The balance of hardships favors Plaintiffs. If an injunction does not issue, Plaintiffs stand to suffer further damage from Defendants' continued unauthorized distribution of products bearing counterfeit Nintendo Trademarks, whereas there is no hardship to Defendants that would counterbalance this consideration. *T-Mobile*, 862 F. Supp. 2d at 1133-34 ("Defendant has no legitimate interest" in continuing with deceptive conduct).

d. The Public Interest Is Served by Preventing Defendants from Perpetuating Their Counterfeiting Activities.

Finally, the public interest is undoubtedly served by preventing Defendants from continuing their infringing actions and from selling counterfeit Nintendo-branded products. Defendants' infringement harms consumers who rely upon the Nintendo Trademarks as a signal of quality, safety, and reliability, and who trust Amazon's reputation. *Treemo, Inc. v. Flipboard, Inc.*, 53 F. Supp. 3d 1342, 1368 (W.D. Wash. 2014) (citing *Brookfield Commc'nns, Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1066 (9th Cir. 1999)); see also *Amazon.com, Inc. v. Robojap Techs. LLC*, 2021 WL 5232130, at \*4 (W.D. Wash. Nov. 10, 2021) (Pechman, J.).

### III. CONCLUSION

Plaintiffs respectfully request that the Court enter default judgment against Defendants and award Nintendo **\$705,963** in statutory damages against Defendant Chen Jing, **\$6,276,543** in statutory damages against Defendant Zhou Rong, and an additional **\$47,652** in statutory damages against Defendants Jing and Rong, jointly and severally. Plaintiffs further ask the Court to enter a permanent injunction prohibiting Defendants and their agents who receive actual notice of the injunction from engaging in any further infringement of Nintendo's intellectual property, or from selling or attempting to sell counterfeit or infringing products to Amazon, its affiliates, or in Amazon's stores. *See Proposed Order.*

*I certify that this memorandum contains 7,233 words, in compliance with the Plaintiffs' Motion to File an Over-length Brief. See Dkt. 33.*

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